

SERVICE DATE – SEPTEMBER 27, 2016

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1011 (Sub-No. 3X)

NORTHERN LINES RAILWAY COMPANY, LLC—DISCONTINUANCE OF SERVICE  
EXEMPTION—IN STEARNS AND BENTON COUNTIES, MINN.

Digest:<sup>1</sup> This decision permits Northern Lines Railway Company, LLC to discontinue rail service over certain segments of railroad in Stearns and Benton Counties, Minn., subject to standard employee protective conditions.

Decided: September 26, 2016

By petition filed on July 1, 2016, Northern Lines Railway Company, LLC (NLR) seeks an exemption under 49 U.S.C. § 10502 from the provisions of 49 U.S.C. § 10903 to discontinue service over approximately three miles of rail line (the Subject Segments) in East St. Cloud, Stearns and Benton Counties, Minn. NLR has requested expedited action.

Notice of the exemption proceeding was served and published in the Federal Register on July 21, 2016 (81 Fed. Reg. 47,487). No comments concerning the proposed discontinuance were filed. The Board will grant the exemption from 49 U.S.C. § 10903, subject to standard employee protective conditions.

BACKGROUND

The Subject Segments are owned by BNSF Railway Company (BNSF). In 2005, NLR acquired authority from the Board to lease and operate the Subject Segments in Northern Lines Railway—Lease and Operation Exemption—Burlington Northern & Santa Fe Railway, FD 34627 (STB served Jan. 6, 2005) (as modified by the decision in the same docket served June 3, 2005). The Subject Segments connect to the BNSF main lines between milepost 73 and milepost 75 and include: (a) All tracks accessed by Main 1 from Tracks 9967 and 9966; (b) Track 0132 along with Track 0146 and Track 0146's connecting industries within the wye complex at main line milepost 74; and (c) Track 0162, also known as Transfer 2.

According to NLR, NLR and BNSF have agreed to remove the Subject Segments from the terms of the lease. NLR states that no customer currently receiving rail service from NLR would lose rail access as a result of this discontinuance and that BNSF will have the right to

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

provide rail service over the Subject Segments. The Subject Segments do not include any tracks over which NLR operates via trackage rights, and there is no overhead freight traffic on those segments. NLR notes that some of the tracks are likely to be excepted industry tracks. NLR states that it has sought authority to discontinue all of the Subject Segments, to the extent of the Board's licensing authority over the segments, to ensure that the public is aware of the transfer of operations from NLR to BNSF, and because of the difficulty in separating the regulated track from the excepted track.

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail carrier may not discontinue operations without the prior approval of the Board. Under 49 U.S.C. § 10502, however, the Board must exempt a transaction or service from regulation when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny of NLR's proposed discontinuance of freight operations on the Subject Segments under 49 U.S.C. § 10903 is not necessary to carry out the RTP in this case. NLR states that no current rail customers would lose rail access as a result of the discontinuance and that BNSF will have the right to provide rail service over the Subject Segments. Moreover, the Subject Segments do not include any tracks over which NLR operates via trackage rights, and there is no overhead freight traffic on these segments. Thus, an exemption from the application process would minimize expenses, reduce regulatory barriers to exit, and result in the efficient and expeditious handling and resolution of this unopposed proceeding. 49 U.S.C. §§ 10101(2), (7), & (15). Other aspects of the RTP would not be adversely affected by the exemption.

We find that regulation under 49 U.S.C. § 10903 is not necessary to protect shippers from the abuse of market power. As discussed earlier, no active rail freight customers would lose rail access as a result of this discontinuance. In addition, because NLR connects only with BNSF, the shippers on the Subject Segments will not lose interline routing options over other railroads.<sup>2</sup>

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose on NLR the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho (Oregon Short Line), 360 I.C.C. 91 (1979).

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<sup>2</sup> Because we find that regulation of the proposed discontinuance is not necessary to protect shippers from the abuse of market power, we need not determine whether the proposed discontinuance is limited in scope.

Because this is a discontinuance of service and not an abandonment, the Board need not consider offers of financial assistance (OFAs) under 49 U.S.C. § 10904 to acquire the Subject Segments for continued rail service, trail use requests under 16 U.S.C. § 1247(d), or requests to negotiate for public use of the segments under 49 U.S.C. § 10905. However, the OFA provisions under 49 U.S.C. § 10904 for a subsidy to provide continued rail service do apply to discontinuances.

Because there would be environmental review during any subsequent proceeding for authority to abandon, discontinuance proceedings do not require an environmental review.

It is ordered:

1. Under 49 U.S.C. § 10502, the Board exempts from the prior approval requirements of 49 U.S.C. § 10903 the discontinuance of operations by NLR over the above-described segments of rail line, subject to the employee protective conditions set forth in Oregon Short Line.

2. An OFA under 49 C.F.R. § 1152.27(b)(2) to subsidize continued rail service must be received by NLR and the Board by October 7, 2016, subject to time extensions authorized under 49 C.F.R. § 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,600. See 49 C.F.R. § 1002.2(f)(25).<sup>3</sup>

3. OFAs for subsidy and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: “**Office of Proceedings, AB-OFA.**”

4. Petitions to stay must be filed by October 7, 2016. Petitions to reopen must be filed by October 17, 2016.

5. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective on October 27, 2016.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

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<sup>3</sup> Consistent with our precedent, any person seeking to file an OFA must provide evidence that there is some shipper that would make use of common carrier service. See, e.g., CSX Transp., Inc.—Aban. Exemption—in Wash. Cty., Md., AB 55 (Sub-No. 727X) (STB served Oct. 24, 2013); Union Pac. R.R.—Aban. Exemption—in Pottawattamie Cty., Iowa, AB 33 (Sub-No. 300X) (STB served Jan. 20, 2012).